IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1304 OF 2003
IN
SUIT NO.4969 OF 1998

Adv.Nitin M.Pawar & Ors. ..Plaintiffs.

V/s.

Pre Masih S/o Rev.Rahmat Masin & Ors. ..Defendants.

And

The Rt.Rev.B.F.Gavit. ..Applicant.

Mr.Sarang Aradhe i/b Varsha Palav, for applicant.
Mr.R.D.Dhanuka i/b A.R.Dhanuka, for Plaintiffs.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 15, 2005.

P.C. :

1. Heard counsel for the parties.

2. The applicant Rt.Rev.B.F.Gavit claims to be the trustee of the plaintiff no.6 Trust. On this assertion, the present application has been filed, so as to implead the applicant and other trustees as defendant No. 20 to 23 in the suit.

3. The counsel for the plaintiffs, on the other hand, submits that plaintiff No.6, Trustee is already party to the suit as plaintiff No.6 in which case, it

is not necessary to bring on record trustees of the said trust as defendants. He in fact, contends that the applicant is not duly elected trustee nor the other persons named in the prayer clause (a) are the trustees of the plaintiff No.6 Trust.

4. Having considered rival submissions, in my opinion, this application will have to be granted to the limited extent, by issuing directions to the plaintiffs to implead the applicant as defendant No.20 in the pending suit. This is so because there is record to indicate that changed report has been filed before the Charity Commissioner, which discloses that the applicant is one of the trustee. If the applicant is trustee, it is necessary that he is party to the proceedings, which involve issues concerning rights and liabilities of the Trust in relation to the suit property.

5. Although the applicant has prayed for direction that the other three persons named in prayer clause (a) also be made party defendants in the suit, that relief cannot be granted at the instance of the applicant because those persons are not before the court and not shown any interest to appear before the court, as is the case of the

applicant herein.

6. Accordingly, this application is partly allowed by directing the plaintiffs to implead the applicant as party defendant No.20 to the suit, that however, is without prejudice to the contentions of the plaintiffs that the applicant is not duly changed trustee of the Trust, which issue will be finally adjudicated by the Charity Commissioner in the pending Changed report. In the event, that issue is answered against the applicant, it will be open for the plaintiffs to apply for appropriate order, as may be advised.

7. Chamber summons is disposed of on the above terms. No order as to costs.

8. Amendment to be carried out within two weeks.

9. Counsel for the applicant waives writ of summons which is required to be served on the newly added defendant No.20.